

1999 CONSTITUTION AND PUBLIC ADMINISTRATION IN NIGERIA: AN ENQUIRY INTO THE IMPLICATIONS OF THE LOOPHOLES AND TROUBLE SPOTS

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Abstract

Right from the creation of Nigeria, there has been government at diverse levels. These governments did not exist in a vacuum. In this dimension, we had seen the existence of different constitutions from the Colonial Constitutions to Independence to Republican to Parliamentary to Presidential and then the recent adjudged Republican Constitution of 1999. These constitutions are not without its demerits and the 1999 Constitution is by no means an exception. It is against this backdrop that the problem of the study is to interrogate the demerits of 1999 Constitution of the Federal Republic of Nigeria vis-à-vis her public administration and their implications. Apart from this, the study focused on diagnosing the loopholes and trouble spots of the 1999 constitution and their implications on public administration. Exploratory research design was adopted by the researcher. Primary and secondary methods of exploratory research were employed. The primary method is based on the views of interviewees, while the secondary method comprises data gathered for the study through content analysis of secondary sources like 1999 Constitution of the Federal Republic of Nigeria,

textbooks, journals and other relevant documents. The study discovered procedural and content based demerits of the 1999 Constitution. In conclusion, the herein examined procedural and content based demerits of the 1999 Constitution are inimical to the administration of federation. To address the loopholes and trouble spots, Nigeria should be fully patterned to conform to the nature of secular states, by withdrawing the constitutional backing that the constitution expressly accorded Islamic religion and its sharia courts.

Keywords: 1999 Constitution, Public Administration, Loopholes/Trouble Spots, Sustainable development, Referendum.

Introduction

There are several perspectives on the deliberations as it concerns the present interest of this paper. Nigeria is one of Africa's most diverse and divided states (Adigbo, 2017:3). The probable reason for this division is the inability of her constitution to outlaw and tame much emphasis on ethnicity in the public administration of the state (Nigeria) with respect to allocation of values, powers, functions and development administration. Right from the creation of Nigeria, there have been governments at diverse levels. These governments did not exist in a vacuum. In this dimension, we had seen or had about the existence of different constitutions from the Colonial Constitutions of 1922, 1946, 1951 and 1954 to Independence Constitution of 1960 to Republican Constitutions of 1963, 1979, 1989 and 1999. These constitutions are not without its demerits and perhaps the 1999 Constitution is by no means left without a great portion of irregularities, shortcomings and weaknesses. Also, it appears that there are values not adequately covered in 1999 constitution of Nigeria. Within the purview of the present study, the problem of the study is therefore to interrogate the demerits of 1999 Constitution of the Federal Republic of Nigeria vis-à-vis her public administration and their implications. Apart from this, we will focus on diagnosing the loopholes and trouble spots of the 1999 constitution in relation to public administration of Nigeria and their implications. The *raison d'être* is that, "...the six geopolitical zones are clamouring for constitutional reform due to said discrepancies noticeable in the constitution and the political structure (Chioke, n.d)."

It should be noted that, "The patriotic agitations for constitution review in Nigeria have questioned the legitimacy of the 1999 Constitution mostly on the ground that it was imposed by the departing military in 1999 without the benefit of a plebiscite, referendum or national conference. Its acceptance in 1999 was provisional, a kind of *modus vivendi* to ease out the military and pave the way for national rebirth-democracy and reconstruction (Ibanga, 2011)." Then, why are there calls for constitution reforms and restructuring of the polity? On this note, we opine that there is no smoke without fire. As such, the indicators are enormous and the implications of the rationale are equally humongous. Possibly, the loopholes and areas of concern in the constitution make the above call imminent and timely and therefore needs to be empirically diagnosed. Following this logic, we note that, "the 1999 constitution failed to address in its entirety the character of the state; the nature of the custodians of state power; the critical issue of hegemony and the inability of the elite to initiate a national project; the national question, production and exchange relations; and other primordially determined or

constructed identity questions (Ihonvbere, 2000).” These are germane to Nigeria’s continued existence.

Conceptualising Constitution cum Public Administration

Constitution is the guiding principles that fashion the policies and activities of the government, the way citizens relate with each other and react to policies and actions of the government and its agencies (Chioke, n.d).” Jordan (1978, p.300) intones that, “A constitution is the document which outlines the basic political institutions and principles to be applied in governing a state. The constitution prescribes how power is to be distributed and provides for the methods by which this distribution can be changed.” Aligning with Jordan (supra), we note with regrets that the Nigerian constitutional example is not so. Why? It has failed to **adequately** furnish us with the methods by which power distribution can be changed. In yet a similar perspective, “Constitution creates the institutions of government which are necessary to the states internal stability and external security (Ezeodili, 2003, p.127).” Constitutions in developed climes are properly crafted to ensure internal stability and security of leaders and the masses, government machineries, state and federal government and even the government at the local/community level. Next is the meaning of public administration.

To get the true meaning of public administration, the term is dissected into two: Public and Administration and afterwards join the two together to coin a detailed conceptual overview. Herein, the term public means the people. Instructively, “Administration is sometimes carelessly referred or supposed to underscore and/or connote the slightly different term, Management (Chioke, 2016, p.16).” Corroboratively, “In contemporary period, there has been misrepresentation, thus, leading to confusion, misunderstanding and the like on the meaning and/or real meaning of the term, ‘Administration’. In some cases at certain quarters, the term “Administration” is mistaken or used in place of the term, ‘Management’ (Olewe&Anga, 2000, p.7).” Administration is, “the direction, coordination and control of many persons to achieve some purpose or objectives (White, 1958: xvi).” By this, it entails the synthesis of man and material resources to achieve a common objective (Chioke, 2016, p.16). However, for an objective to be reckoned as a common objective, it must be one which other goals/mission statements are tailored to achieving – one which individual goals of other persons, units and parts of the whole do not override. In this regard, Herbert A. Simon (1950, p.3) in Olewe&Anga (2000, p.7) put the matter thus: “Administration can be defined as the activities of groups cooperating to accomplish common goals.” Furthermore, Olewe&Anga (2000, p.7) posit that, “Administration is a process which permeates all functional areas or collective effort, be it public or private, police or specialty of contemporary era towards the realization of a consciously laid down objective.”

Given the foregoing; we adopt the stance that, “Administration is ubiquitous (Chioke, 2016, p.17).” The ubiquity of administration means that administration exists where money, man and material resources are involved. As used in different situations, the term administration covers almost every sphere of activity involving cooperative action (Onah, 2005, p.1). Therefore, no common objective or plan can thrive regardless of the source without the installation of an administrative arm. Hence, “Administration is also used to describe that part of the government that manages public affairs during the period of office of a particular chief executive (Onah 2005, p.1).” Okpata&Ejem (2020, p.56) appeared to have aligned with

Onah (2005) when they similarly noted that administration is also used to designate an activity through its function of implementing organisational decisions or goal. Having gone thus far with explications on Administration, we pause to focus on demystifications on public administration.

Public Administration is primarily concerned with the strict implementation of the resolutions of government through its ministries, department and agencies (MDA) or any other proxy acting in its stead (Chioke, 2022). Considering this, public administration is a veritable means of attaining policy statements expressed in the constitution of the land. Thus, there is a nexus between constitution and public administration. According to National Open University of Nigeria (NOUN)(2012)“Public Administration is, generally believed to be, a study that deals with the science of getting things done in the most efficient way in the public sector.” Then the instrument used in prescribing the most efficient way in the public sector is the constitution of the land.

Then, it was right for Ezeani (2006) to have seen public administration as the activities of bureaucrats and as a field of study. Aligning with these views; public administration is, “the act of the implementation of governmental well formulated policies or programmes by a group of government personnel known as bureaucrats (Chioke, 2012:1).” This notwithstanding, “When administration is focused on achieving public goals, it becomes public administration. Public administration is therefore important to the growth and development of any society (Okpata&Ejem, 2020, p.56).” Thus, public administration must be appropriately and adequately tailored through the constitution of any democracy to meet up with the contemporary needs of a change driven society.

Material and Methods

To answer the whys and wherefores of this study, the researchers adopted qualitative research design and exploratory approach was used. The justification for this is that exploratory approach is sufficient for gaining ideas concerning the focus of the study. Therefore, Udeuhele, Nkwede&Obona (2020:220) rightly stated that, “the goal of exploratory is to discover ideas and insights.” In its data collection, the researcher added qualitative method. To this end, the study deals with the content analytical approach of literature elicited for the research. In short, “qualitative approach seeks to understand and interpret the meaning of situations or events from the perspectives of the people involved and as understood by them (Ibid).” The primary source of the qualitative data in the analysis is key informant interviews conducted by the researcher which included six participants. The justification for this number is based on Morse (1994) who stated that at least six key informants should be interviewed for a phenomenological research. The interviewed Key Informants (KIs) and their respective strata for each interviewee are abbreviated as Interviewee 1 & 2 for Political Scientists, Interviewee 3 & 4 for Legal Practitioners, Interviewee 5 & 6 for Civil Servants. Participants represent the six geopolitical zones in Nigeria. The secondary method comprises data gathered for the study through content analysis of secondary sources like: 1999 Constitution, textbooks, journals and other relevant documents. For focus and clarity, the scope of the study concentrated on the period between 1999 to 2021.

Results and Discussion

Based on content analysis and in-depth desk review of secondary materials; the following findings emerged:

Demerits of Nigeria's 1999 Constitution: A Critical Reflection Pre-Pandemic, Pandemic cum Pandemic Discourse

There are several arguments against the 1999 constitution of Nigeria spotted through critical reflection and qualitative survey of existing documents. Categorically, the demerits have and/or follow two distinctive patterns:

- ❖ Procedural based demerit; and
- ❖ Content based demerits.

The procedural demerits emanated from the process of making the 1999 constitution. Distinctively, the content based demerits of the constitution emanated from the inadequate features of the 1999 Constitution.

Procedural Demerit

Succinctly; the following demerit of 1999 constitution were found:

Lack of due consultation: The 1999 Constitution of Nigeria was hastily promulgated by Armed Forces Ruling Council without due consideration for popular opinion and interest. Ibanga (2011) in his conclusion had admitted that, "Constitution making has always been challenging in any polity. Because it is expected to put together the aspiration, commitment, values and agreement of different communities..." But did the constitution of Nigeria key into this view? It is the position of this paper that the constitution lacks due consultation that constitutions of other climes are known with. As a matter of fact, it failed to put together the values and aspirations of different communities in Nigeria. This made the constitution to be riddled with unworkable clauses and clumsy provisions.

Military handiwork – The constitution was made during military regime of General Abdusalam Abubakar and was approved by the Armed Forces Ruling Council as the legislative organ of the Military regimes in Nigeria. Hence, the procedural steps taken in designing and tailoring 1999 constitution are done by the dictates of military dictators and have consequently flattened the tyres of governance in Nigeria. No military regime in the world has ever produced a constitution that has the true and ultimate embellishments of modern democracy. The tone of 1999 constitution depicts that it has calculatedly enthroned autocracy on the spot by too much concentration of political power on the federal executive.

Content Demerits

The following demerits are based on the contents of the 1999 Constitution which this paper has found to portend several implications on the Administration of the Nigeria polity:

Centralisation tendencies – Too much powers of the government have been centred on the centre leaving the State as a federating partner with little or nothing to thrive with. To further exacerbate the matter, the constitution had brazenly ignored the need for state and local police. Importantly, it can be argued that the power it gave to the national government as regards the formation/registration of political parties in one way or the other repels and negates true practice of federalism. Thus, there is over centralized governance/public

administration through the workings of the constitution. The implication of this is that the constitution directly or indirectly succeeded in creating a unitary system of government in a heterogeneous society like Nigeria instead of federal system of government.

Internal instability: Constitution creates the institutions of government which are necessary to the states internal stability and external security (Ezeodili, 2003, p.127). Nigeria’s constitution is lacking in the above dimension as it failed to create well organized institutions of government that will see to the internal stability of the country. Nigeria has experienced series of internal instability in her public administration as a result of constitutional loopholes, legal lacuna and ambiguity of provisions. Concerning the problem of insecurity, the following views were expressed by interviewees:

Code	State of the Federation	Participants’ views
Interviewee 1 & 2	Anambra& Delta	Reacting to the question, interviewee 1 averred that, ethnicity has hampered development and heightened crisis/instability at the local level in Nigeria in several fronts. Interviewee 2 differed by saying that the constitution is not responsible for internal instability.
Interviewee 3 & 4	Lagos & Taraba	Interviewee 2 is of the view that prior to the global experience of Covid-19 pandemic and even now, Nigeria suffers great deal of internal instability. Hence, interviewee 2 deferred from other views. However they attributed instability to mismanagement of the county’s plurality.
Interviewee 5 & 6	Kaduna & Plateau	The citizens are living in darkness and will continue to experience internal instability as the constitution upon which it stands is fraudulent. To solve this, they suggest that the constitution should be reformed.

It should be noted at this point that, “With respect to the institutional relationship, there are series of disagreement between the federal government and States in Nigeria. Conflicts in the

institutional relationship may occur with respect to uncertainties in the areas of functionalities of federating partners, which are occasioned by ambiguous provisions and legal lacuna (Chioke, 2021, p.249).” Owing to this, it is germane to remind us that, “conflict and clash of interest may arise especially between the central and states/regional government in discharging their concurrent functions (Ewuim, 2008, p.73-74).” Importantly, the matter appears to be extreme at the local level. In respect of this, Akindiyo, Imoukhuede and Mohammed (2015:113-114) predicate that, “Local Government in Nigeria is crisis-ridden. The debate over the performance of its statutory functions has undermined the existentialism of local government whose authority is derived from the constitution. Small wonder or no wonder the fate of local government in Nigeria has assumed a worrisome dimension since the democratic drive in 1999.” The reason why local government in Nigeria is crisis-ridden is based on the inadequate provisions of the constitution which have continued to fan the embers of crisis and instability in the smooth running of the state.

Insecurity: Nigeria’s vast ethnic, linguistic, religious and regional diversity has been an abiding source of societal tensions and conflicts (Adigbo, 2017:3). The mismanagement of the country’s diversity has introduced several security threats. The constitution provided for the Nigeria Police force – one that will be controlled by the federal government of Nigeria. Awfully, the constitution has failed to provide sufficient security for lives and properties of all persons in Nigerian federating states. How? The constitution expressly made State Governors Chief Security Officers (CSOs) of their respective federating States, but neither gave them security agencies nor did it grant them substantial power over police force. The implication on the Administration of State government has been deadly and therefore condemnable as the Governors have goofed and failed to secure the lives of their citizens due to the irresponsiveness and facetiousness of the centralized police. Concerning the problem of insecurity, the following views were expressed by interviewees:

Code	State of the Federation	Participants’ views
Interviewee 1 & 2	Anambra& Delta	While citing the recent Kuje prison break, they unanimously posited that the leaders have failed area. The two interviewees were unanimously disappointed over the zero level of seriousness over the fight against insurgency in Nigeria. Interviewee 1 argued that there is no safe zone in Nigeria and as such public administration in Nigeria has not been easy in recent time.
Interviewee 3 & 4	Lagos & Taraba	Interviewee 3 stated that the constitution is to be blamed for not allowing

		state governors to have their own police. Interviewee 4 almost wept aloud while noting that government has failed to fulfill its constitutional role of safeguarding lives and properties. She added that there is need for security reform and strict implementation of the reform. She corroborated the view of Interview 3 as she said that the constitution enthroned corruption which resulted to security challenges here and there.
Interviewee 5 & 6	Kaduna & Plateau	They expressed their satisfaction over government's effort at fighting security woes of the country. However, they accused members of the ruling party of sabotaging the efforts so far.

Today, component states like Benue, Kogi, Yobe, Niger, Borno, Anambra, Ebonyi, Enugu, Imo, the list not exhaustive have been witnessing loss of lives and properties as a result of volatile nature of those areas and the ceaseless attacks by Fulani herdsmen marauders, Boko Haram and unknown gunmen.

1999 Constitution: An Examination of the Loopholes and Trouble Spots and their Implications on Public Administration

By loopholes, we mean the gap in law occasioned by omissions and others. Then, trouble spot is the critical stage or situation in which violence or troubles start and cannot or may not be controlled. The constitution was hurriedly drafted and promulgated by Decree 24 of 1999 by the Military government of General AbdusalamiAbubakar and therefore remains replete with gaps/errors herein alternatively called loopholes and trouble spots. From the content analysis of the 1999 constitution, below are amongst the spotted loopholes and trouble spots in the 1999 constitution of the Federal Republic of Nigeria:

Lack of Institutionalisation of Human Rights – Human rights are inalienable rights which the country must not joke with. We see no reason for not incorporating the Human Rights Commission in the constitution. This omission places a serious question mark on the seriousness of the government of Nigeria in the protection of human rights of her citizens. As such we have in abundances of illegalities as regards human rights. “The late President

Mandela had called for Nigeria’s expulsion from the Commonwealth after the execution of political activist Ken Saro-Wiwa, arguing that the disregard of human rights during the late SaniAbacha’s regime (1993-1998) was sufficient grounds for removal (Ossai&Babalola, 2020).” Today, it has been cases of abuse of the inalienable rights of the people and the government through its body language appears to prefer animals to human beings. The implication of this is that government through its public administration process in Nigeria has neglected the socio-economic rights of Nigerian citizens as the constitution is devoid of provisions on right to employment. In fact, the provisions in Chapter two of the constitution has remained not justiciable thus portraying the fact that the socio-economic rights of citizens and other provisions therein are nonissues to the Administrators of Nigeria. Then, what is fulcrum of governance, leadership and public administration? It is that governance, leadership and public administration revolves around the people, and democracy too is all about people’s oriented leadership.

Sectionalism and religious sentiment: Nigeria is one of Africa’s most diverse and divided states (Adigbo, 2017:3). Part of the reason for this is because the constitution of the country is sectional, tribal and has favoured religious sentiments. Additionally, “...it is believed that, the nascent development here in Nigeria in the aspect of sectionalism and associated aspects are quite enigmatic when narrowly viewed and compared to the democratic principles and the tenets of 21st century governance at the global level. Why? This is because corruption and allied vices have been allowed to linger in the scheme of things as they pertain to the governance of this country (Chioke, 2017:3).” The 1999 constitution has deliberately compromised its secular stance when it expressly inputted provocative clauses that favour Islamic religion to the detriment of other religions in Nigeria. In short, Sections 275 – 279 took into cognizance matters that concern Islamic religion and neglects all other. Concerning the sectional bias in Nigeria, the following views were expressed by interviewees:

Code	State of the Federation	Participants’ views
Interviewee 1 & 2	Anambra& Delta	Political marginalisation has been fueled through the sectional clauses in the 1999 constitution in Nigeria. How can one geopolitical zone be 5 states, whereas others have 6 states? This they said is discrimination, religious sentiment, bias and lack of togetherness.
Interviewee 3 & 4	Lagos & Taraba	They unanimously agreed that the constitution has favoured one part while stealing from the other parts. They noted that this makes governance/public administration in Nigeria redundant. On the way forward, Interviewee 3,

		called for a rethink, while Interviewee 4 was indifferent.
Interviewee 5 & 6	Kaduna & Plateau	They agreed that there is no big demarcation between Nigeria and an Islamic state. Nigeria practices sharia law in 12 northern states and nobody dares challenge such aberration. Interviewee 6 vehemently opposed the constitutional backing of sharia courts in a secular country like Nigeria.

Lack of constitutional check on military rule – The constitution did not prescribe ways of dealing with military intervention in politics. This remains a major loophole that has been indirectly admissible in the constitutional framework of Nigeria. Concerning the inability of the constitution to checkmate military incursion into Nigerian politics, the following views were expressed by Interviewee 1: *The country suffered in the hands of corrupt soldiers mainly because the constitution is weak and did not border about outlawing military rule.* Similarly, Interviewee 6 noted: *Nigeria has continued to operate with a constitution which has several loopholes leading to corrupt practices which has been the basis for military manipulation of democratic governance in Nigeria.* Interviewee 4 said: *Seeing that Nigeria is sick due to its inability to check anomalies the army had dealt with our public administration and made it unable to engineer development during the military era and even now.*

Recently, there are speculations and intense fear that there may be a repeat of military rule in Nigeria. If this happens, Nigeria will be plunged into a Bermuda triangle. In fact, this gap is in itself a Bermuda triangle and must not be allowed to exist.

Corruption: Current Nigerian constitution has favoured corruption in the politics and administration of government bureaucracies. How? The concentration of greater powers on the executive makes official corruption seemingly uncontrollable. Given this, “bureaucratic organizations in Nigeria are largely and grossly inefficient (Chioke, 2017, p.11).” And the case of local governments in Nigeria is not an exception. Why? It is a matter of constitutional loopholes, demerits and lack of proper deconcentration of power that have helped states to corruptly manipulate local governments. Corruption has been made possible at the local government level as a result of the noticeable contradictions and the loopholes existing in the constitution with respect to the creation of local councils and the elections of officials thereof. For instance, Section 7(1) of the 1999 Constitution of the Federal Republic of Nigeria provides for: *The system of local government by democratically elected local government Councils is under this constitution guaranteed, and accordingly, the government of every State shall, subject to Section 8 of this constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance, and functions of such Councils.*

Regrettably; despite the above provision, public administration at the local government remains messy – that is, disordered and/or careless. A look at Section 8(3) of the 1999 Constitution of the Federal Republic of Nigeria follows suit:

A bill for a Law of a House of Assembly for the purpose of creating a new local government area shall only be passed if - (a) a request supported by at least two-thirds majority of members (representing the area demanding the creation of the new local government area) in each of the following, namely - (i) the House of Assembly in respect of the area, and (ii) the local government councils in respect of the area, is received by the House of Assembly; (b) a proposal for the creation of the local government area is thereafter approved in a referendum by at least two-thirds majority of the people of the local government area where the demand for the proposed local government area originated; (c) the result of the referendum is then approved by a simple majority of the members in each local government council in a majority of all the local government councils in the State; and (d) the result of the referendum is approved by a resolution passed by two-thirds majority of members of the House of Assembly

Conclusively, a civilian government no matter how democratic it is in Nigeria cannot meet up with the Section 8 requirements for the creation of new states and local governments in Nigeria. Aside from this, “several other constitutional lapses in the drafting of the Fifth Schedule have been employed to make the Code of Conduct Bureau and Tribunal ineffective (Taiwo&Oyelowo, n.d:271-274).” With this anomaly, corruption has been allowed to thrive in Nigeria before now and may continue in the post covid-19 pandemic era of Nigerian public life.

Conclusion and Recommendations

The above procedural and content based demerits of the 1999 Constitution are inimical to the administration of federation. Based on the findings; the study concludes that the constitution is not fit for a democratic governance and public administration. Also, the constitution is not fit for a federalist state and therefore negates proper public administration of Nigeria as a federation. From the perspectives of the interviewees, this study concludes that Nigerians are tired of the current structures and the resultant constitutional framework. This review has its implication on subsequent constitutional drafting or amendments as it has revealed the loopholes and trouble spots. In this regard, it is expected that this review will have a snowball effect on public administration practices in Nigeria. Viewed from this sense, it is believed that this paper is timely in the aftermath of the #END SARS protests of year 2020, current insecurity challenges cum the ongoing debates/discussions on constitutional amendment.

Based on the issues/loopholes raised and the conclusion of the paper, the paper submits the following as remedial treatments:

- In keeping with federalism as one of the key attributes of the constitution, restructuring of the political structures of Nigeria through constitutional amendment based on due consultation and sampling of public opinion is herein recommended.
- To address the insecurity problem as a fundamental demerit, state police should be allowed to take care of both state and local needs at this time the country is battling

with several security challenges perpetrated through the hideous activities of Fulani herdsmen, Boko Haram and unknown gunmen.

- To address the loopholes and trouble spots, Nigeria should be fully patterned to conform to the nature of secular states, by withdrawing the constitutional backing that the constitution expressly accorded Islamic religion and its sharia courts.

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